

HOUSE BILL REPORT

HB 1643

As Reported by House Committee On:
Judiciary

Title: An act relating to liability immunity for municipal or nonprofit owned skate parks that charge nominal fees.

Brief Description: Extending liability immunity to certain skate parks that charge a nominal fee.

Sponsors: Representative B. Sullivan.

Brief History:

Committee Activity:

Judiciary: 2/18/05, 2/22/05 [DPS].

Brief Summary of Substitute Bill

- Allows public or non-profit skate parks to charge a fee of up to \$5 for supervision and maintenance and still retain immunity from liability for their negligent, grossly negligent, or reckless acts.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Bill Perry (786-7123).

Background:

The Legislature has changed the common law on the liability of landowners for injuries incurred by certain recreational users of land. In specified cases, a statute provides that landowner liability exists only for intentional harm.

At common law, on the other hand, a landowner may be liable for unintentionally causing harm through acts of negligence, gross negligence, or recklessness, as well as through intentional acts. A landowner's liability at common law depends in part on the status of the injured party. That is, a landowner's duty to a particular person varies depending on whether the person is, for instance, a trespasser or an invitee. Generally, a landowner's duty to a trespasser is only to refrain from willfully or wantonly injuring the person, while the duty owed an invitee is to use ordinary care to keep the property reasonably safe.

A statute prescribes a different rule in the case of a landowner who allows members of the public to use his or her land for certain recreational purposes. This statutory provision applies to both private and public landowners. Generally, if a landowner allows the public to use the land for recreational purposes without charge, then the landowner is liable only for injuries that the landowner intentionally causes. This insulation from liability does not apply to an injury caused by a "known dangerous artificial latent condition" when the landowner has not posted conspicuous warning signs. In order for this exception to apply, the landowner must have had actual knowledge of an artificial condition that is not readily apparent to a recreational user and that presents an unreasonable risk of harm, and then must have failed to post a warning.

The statute insulating landowners from liability applies to "outdoor recreation" including, but not limited to, certain specified activities. These activities are:

- gathering firewood;
- hunting, fishing, clam digging;
- camping, picnicking;
- swimming, hiking, bicycling;
- riding horses or other animals;
- driving off-road vehicles, snowmobiles, and other vehicles;
- boating and water sports;
- winter sports;
- nature study;
- viewing historical, archaeological, scenic, or scientific sites;
- skateboarding and other nonmotorized wheel-based activities; and
- hanggliding and paragliding.

The insulation from liability is generally not available if a fee of any kind is charged to users of the land. However, landowners are specifically allowed to charge a fee of up to \$25 for cutting, gathering, and removing firewood.

Summary of Substitute Bill:

Public or private nonprofit owners or operators of skate parks may charge a nominal fee of up to \$5 for supervision and maintenance of parks. Skate parks include indoor or outdoor facilities for the exclusive recreational or sporting use of skateboards, bicycles, scooters, or roller skates.

Substitute Bill Compared to Original Bill:

The substitute limits the "nominal" fee that may be charged to no more than \$5.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The bill will allow mentoring and adult supervision of skate park users. Unsupervised parks can be a problem. Communities have spent a great deal of time, effort, and money in providing skate parks, and they need to be able to charge something to help defray the costs of maintenance and supervision.

Testimony Against: None.

Persons Testifying: Representative B. Sullivan, prime sponsor; and Jeff Dunleavy and Amy Bell, YMCA of Snohomish County.

(Concerns) Larry Shannon, Washington State Trial Lawyers' Association.

Persons Signed In To Testify But Not Testifying: None.